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IN THE

Supreme Court of the United States

No. 402—October Term, 1964

HENRY WASMUTH, ROBERT A. DAVIS, DANIEL McGAURN and LEONARD FELDMAN, suing on behalf of themselves and all other chiropractors in the State of New York who are similarly situated,

Appellants,

against

JAMES E. ALLEN, JR., as Commissioner of Education of the State of New York, and THE REGENTS OF THE UNIVERSITY OF THE STATE OF NEW YORK,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

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(1)

The appeal to this Court challenges the right of the State of New York to impose certain conditions upon the right of chiropractors to practice chiropractic. The legislation (L. 1963, ch. 780 and ch. 781) followed closely on the decision in *Chiropractic Assoc. of N. Y.* v. *Hilleboe, Com'r. of Health*, 12 N. Y. 2d 109, 187 N. E. 2d 756 (1962), in which the opinion referred at some length to the want of knowledge of medicine, and the poor clinical judgment, exhibited by chiropractors. These persons had never previously been required to take examinations and secure licenses, and the

Legislature lost no time in remedying the situation which the cited case had so heavily emphasized.

(2)

The appellants argue that a trial of the issues should have been had. But in New York State the researches of geneticists had been carried on intensively since Hiroshima and Nagasaki and had focussed attention upon one of the gravest ills attendant upon the practice of chiropractic by persons ignorant of medicine. The researches of geneticists (some of whom had testified at very great length in *Chiropractic Assoc.* v. *Hilleboe, supra*) had established beyond doubt that the use of X-rays upon the lower spine had the effect of splitting chromosomes, injuring irreparably the human organs of reproduction, and leading to monstrous births. The Legislature, framing remedial legislation, had the right to go very far in requiring applicants for chiropractic licenses to demonstrate that they had a thorough knowledge of such basic subjects as anatomy, physiology, chemistry, bacteriology, pathology and, most important of all, knowledge of the use and effects of X-ray.

(3)

Recent decisions of this Court in refusing to disturb State Court decisions upholding the regulation of the practice of the healing arts have shown an undeviating tendency to support the State authorities. We call attention to the following cases:

Louisiana State Board of Medical Examiners v. *Fife*, 162 La. 681, 111 So. 58 (1926), aff'd 274 U. S. 720 (1927);

Davis v. *Beeler*, 185 Tenn. 638, 652, 207 S. W. 2d 343, 349 (1948), app. dis. 333 U. S. 859 (1948);

Dantzler v. *Callison*, 230 So. Car. 75, 94-95, 94 S. E. 2d 177, 188 (1956), app. dis. 352 U. S. 939 (1956); *Stuart* v. *Wilson*, 211 Fed. Supp. 700 (N. D. Tex., 1962), motion to affirm granted 371 U. S. 576 (1963).

(4)

These cases show an established public policy against the compartmentalization of medical knowledge, and an awareness on the part of legislators that not only must the applicant know his own subject but he must *know the limitations of his own system of therapy.*

In the first of the group of four cases cited above, the Supreme Court of Louisiana, whose judgment this Court affirmed, said (*Louisiana State Board of Medical Examiners* v. *Fife*, 162 La., at p. 686; 111 So., at pp. 60-61):

> "The Legislature, however, in defining these requirements, cannot prescribe, as a condition to the right to practice, knowledge of a subject which bears no relation to the practice of medicine. *Dent* v. *West Virginia* [129 U. S. 114] *supra*. But this does not mean that the Legislature, in exercising its power to prescribe the qualifications, which, in its judgment, one should possess to practice medicine, must make requirements such as to provide for every school of medicine that may exist, by requiring of those belonging to each particular school a knowledge only of those subjects, which the theory of healing, advocated and put in operation by each school, requires. Were it otherwise, the Legislature would be greatly hampered in the exercise of its power to protect the general health and the public from imposition and fraud. Every group of men who might get together and evolve some system, designed to restore health, would be entitled to recognition, and all that could be required of them would be evidence of good character and a knowledge of such subjects as their particular school seemed to require, although the Legislature might deem with reason a knowledge

of such subjects wholly insufficient to entitle any one to treat the sick. However, the Legislature is not hampered by any such restriction in the exercise of its power to protect the public health."

(5)

To the cases hereinbefore cited we may cite others the basic premise of which is that there is a presumption that the Legislature has, before passing a bill, satisfied itself of the existence of facts necessary to support the legislation. Typical cases are these:

United States v. *Carolene Products Co.*, 304 U. S. 144, 152 (1938);

South Carolina State Highway Dept. v. *Barnwell Bros., Inc.*, 303 U. S. 177, 191 (1938);

I. L. F. Y. Co. v. *Temporary State Housing Rent Comm.*, 10 N. Y. 2d 263, 269 (1961).

This Court has, particularly in passing upon statutes designed to protect the public health, acknowledged that "there is wide discretion on the part of the legislature in determining what is and what is not necessary—a discretion which courts ordinarily will not interfere with". *Manigault* v. *Springs*, 199 U. S. 473, 480-481 (1905). And see *East River Savings Bank* v. *Hahn*, 326 U. S. 230, 232 (1945).

(6)

The appellants have exaggerated the effect of the *England* group of cases at p. 12 of the Jurisdictional Statement. This Court said nothing about the merits of the chiropractors' claims. The problems were largely procedural. But the litigation boomeranged against the chiropractors, for when the trial which this Court ordered was had in the State court, and brought up for review in the intermediate

appellate Court, the latter Court said (*England* v. *Louisiana State Board of Medical Examiners,* 126 So. 2d 51, 56 [1961; not officially reported]):

> "[3] We believe, therefore, that the question of whether or not any beneficial results may be obtained by treatment of chiropractic is, to say the least, highly controversial and the question as to the licensing of a person to practice chiropractic is one that addresses itself to the Legislature and their failure to license chiropractic, as such, is one peculiarly within their wisdom * * *".

The report states that the Louisiana Supreme Court denied certiorari; and in alluding to the case in *England* v. *Louisiana State Board of Medical Examiners,* 375 U. S. 411 (1964), footnote 4 on page 414, this Court said: "Appellants made no attempt to obtain appellate review of the state decision in this Court."

CONCLUSION

The motion to dismiss should be granted for want of a substantial federal question; or, in the alternative the judgment appealed from should be affirmed.

August 20, 1964

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